



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/810,857

03/26/2004

Thomas Gottemoller

030939

7118

41835

7590

06/01/2007

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

HENRY W. OLIVER BUILDING

535 SMITHFIELD STREET

PITTSBURGH, PA 15222

EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/810,857

Applicant(s)

GOTTEMOLLER, THOMAS

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 102-143, 156-189 and 193-208 is/are pending in the application.
- 4a) Of the above claim(s) 129, 160, 176, 184 and 195 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 102-128, 130-143, 156-159, 161-175, 177-183, 185-189, 193, 194, and 196-208 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. This application contains claims drawn to an invention nonelected with traverse in the paper filed 1/19/06.

Claim Rejections - 35 USC § 11, 1st Paragraph

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 102-128, 130-143, 156-159, 161-175, 177-183, 185-189, 193, 194, and 196-208 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation that the soya fiber particulate itself contains fermented soya particles does not appear to be supported by the original specification. Although Applicant's reference to paragraph 58 for support is noted, this reference pertains to fermented foods which may contain a soya fiber particulate. In other words, there is no direction reference to the soy fiber particulate itself having been fermented or containing a fermented material. In addition, there is no indication that the fermented food was fermented while the soy fiber particulate was contained therein.

This is a new matter rejection.

Claim Rejections - 35 USC § 102

Art Unit: 1761

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 102-124, 126-128, 130-142, 156-159, 161-173, 175, 178-183, 186-189, 193, 194, and 197-208 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1127495.

EP 1127495 discloses a ground soy product having a particle size of, for example, 1-10 microns and a median particle size of between 10-20 microns (see Figure 2), wherein said ground soy product is used in various food compositions such as meat, beverages, and ice cream and wherein said product would be expected to have open portions such that water or a water based liquid is allowed into intracellular spaces of said soy product since same has been ground to such a fine level. It is expected that said product would have the stability as called for in the instant claims due to the similarity in processing with the instant invention and the dry nature of the product. It should be further noted that the soy product of EP 1127495 may be derived from the non-hull soybean germ of the soybean and that same are used in a culture medium for fermentation processes or bread wherein it is expected that the soybean germ in either of the culture medium or bread would also undergo fermentation and therefore carry a fermented portion as called for in the instant claims (e.g. claim 12; paragraph 42 and 43). It should further be noted that the soy bean material is heat treated (e.g. paragraph 42). Although EP '495 is silent regarding jet cooking to achieve

Art Unit: 1761

such heating, it is not seen where such specific heating would provide a different product in view of the instant claims as currently recited.

With regard to the instant claims call for a mean particle size of about 22 or about 24 microns, the presence of the upper limit of 20 microns in EP '495 is considered to fall within the range surrounding each value due to the term "about" which provides values below and above same. In addition, virtually all of the particles are less than the 44 and 45 micron limit called for in claims 201-204 (see Figure 2).

6. Claims 102-128, 130-143, 156-159, 161-175, 177-183, 185-189, 193, 194, 196-200, and 205-208 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallis et al (U.S. Patent No. 6244528).

Wallis et al discloses ground soybean products having a particle size between 5 and 25 microns wherein same are employed in a variety of food product such as soymilk, tofu, and dairy analogs. Said product would be expected to have open portions such that water or a water based liquid is allowed into intracellular spaces of said soy product since same has been ground to such a fine level. It is further expected that said product would have the stability as called for in the instant claims due to the similarity in processing with the instant invention and the dry nature of the product (col. 1, line 34 – col. 2, line 57; col. 3, line 28 to col. 4, line 34). It should be further noted that Wallis et al employs dehulled soybeans in preparing the powdered product wherein same is used in a foods which are to be fermented (e.g. yogurt) wherein it is expected that the soybean powder would also undergo fermentation and therefore carry a fermented portion as called for in the instant claims (e.g. col. 1, line 58; col. 4, line 31). It should further be

Art Unit: 1761

noted that the soy bean material is heat treated (e.g. col. 4, lines 20-24). Although Wallis et al is silent regarding jet cooking to achieve such heating, it is not seen where such specific heating would provide a different product in view of the instant claims as currently recited.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 201-204 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallis et al.

Wallis et al discloses a soya fiber particulate wherein all of the particles are 5 and 25 microns which is less than the limit called for in claims 201-204. Although Wallis et al does not specify the median particle size, the range of sizes recited therein does encompass a particle size of about 22 and 24 microns. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such particular size median as a matter of preference.

Applicant's Arguments

9. Applicant's arguments and amendments filed 8/3/06 have been fully considered and were persuasive in withdrawing a number of previous rejections. However, other rejections remain and have been modified to address the new claim limitations.

Art Unit: 1761

All other arguments have been addressed in view of the rejections as set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

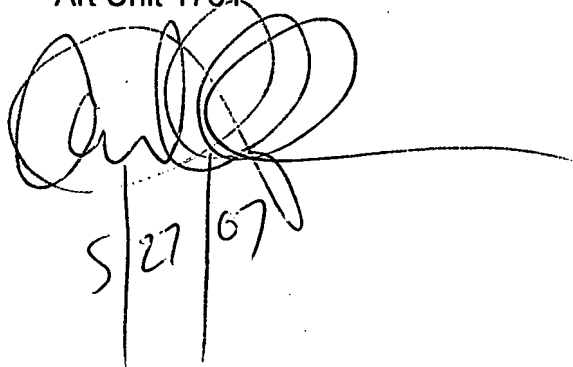
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/810,857
Art Unit: 1761

Page 7

Anthony Weier
May 27, 2007

Anthony Weier
Primary Examiner
Art Unit 1761



5/27/07